

(2013) 08 KAR CK 0249

In the Karnataka High Court

Case No : Writ Petition No. 10670 of 2007 (L-TER)

Superintending Engineer (Elec) O and M Circle

APPELLANT

Vs

Sri. Ranganath

RESPONDENT

Date of Decision : 30-08-2013

Acts Referred:

Constitution of India, 1950 — Article 12, 16

Industrial Disputes Act, 1947 — Section 10(4-A), 25B, 25F

Citation : (2014) 1 AKR 156 : (2013) ILR (Kar) 6017 : (2014) 1 KarLJ 537

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : B.C. Prabhakar, for the Appellant; Vinod Gowda and Vigneshwar S. Shasthry, for the Respondent

Final Decision : Partly Allowed

Judgement

Ram Mohan Reddy, J.—Petitioner, Electricity Corporation, an instrumentality of the State under Article 12 of the Constitution of India aggrieved by the award dated 26.12.2006 in IDA 73/2003 of the Labour Court at Chikmagalur directing reinstatement of the respondent to his original position within two months from the date of publication of the award with 50% of back wages from the date of refusal of employment till the date of reinstatement has presented this petition. There is no dispute that the petitioner engaged the services of the respondent as an Office Attendant on contract basis w.e.f. 3.10.2000 for a period upto 31.3.2001 on payment of consolidated monthly wage of Rs. 1,500/- in terms of the contract Ex. M1, and on its expiry, from 1.4.2001 onwards was engaged on monthly basis upto 27.9.2003 whence his service was dispensed with. Respondent instituted a petition u/s 10(4-A) of the Industrial Disputes Act, 1947, for short "ID Act", registered as IDA 73/2003 on the file of the Labour Court at Chikmagalur alleging illegal termination due to violation of Section 25F of the Act. That petition was opposed by filing counter statement of the petitioner-Corporation, on notice, inter alia, denying the fact that petitioner was appointed against a permanent vacancy though was engaged on contract basis, on monthly

consolidated wage of Rs. 1,500/-, through an agency and not directly by the petitioner. According to the petitioner there was neither regular salary nor pay scale fixed by which wages were paid to the respondent, hence it was asserted that before terminating the service of the respondent there was no necessity to hold domestic enquiry.

2. The Labour court in the premise of pleadings of parties framed the following two issues:

i) whether II party was justified in terminating the services of the party on 27.9.2003?

ii) whether the I Party workman entitled to reinstatement in service with back wages and regularization of employment as sought?

Respondent was examined as WW-1 and marked 27 documents as Exs. W1 to W27, while for the petitioner one witness was examined as MW-1 and marked 3 documents as Exs. M1 to M3. The Labour Court having regard to the material on record returned findings in the negative on issue No. 1 holding that the respondent having completed 240 days of continuous service satisfied the concept of Section 25B and failure to pay compensation u/s 25F of the Act, the refusal of employment was illegal and accordingly by the award impugned directed reinstatement of the workman to the original position with 50% back wages.

3. Learned Counsel for the petitioner places reliance upon the reported opinions of the Apex Court to contend that the respondent when not recruited against a sanctioned post, in accordance with the Recruitment Rules, but when engaged on contract basis as an "Office Attendant" is disentitled to reinstatement much less back wages. Learned counsel hastens to add that in a catena of decisions of the Apex Court in almost identical facts and circumstances it is held that even if the workman proves to have completed 240 days of continuous service within a period of 12 months immediately preceding the termination, it is not axiomatic for the Labour Court to direct reinstatement and if termination is in violation of the law relating to retrenchment would be entitled to compensation in lieu of reinstatement and back wages. Learned counsel further submits that since there is no sanctioned post of Office Attendant in the petitioner-Organisation, reinstating the respondent to that non-existent post is impermissible.

4. Per contra learned counsel for the respondent-workman places reliance upon the decision of the Apex Court in Devinder Singh -vs- Municipal Council, Sanaur AIR 2011 SC 2532 at paragraph 25 to sustain the award as being well merited, fully justified and not calling for interference.

5. Facts not being in dispute the only question that arises for decision making is, whether the Labour Court was justified in directing reinstatement of the respondent to the original position with 50% back wages?

6. In Madhyamik Siksha Parishad, U.P. Vs. Anil Kumar Mishra and others etc., , a

three Judges Bench observed thus:

4. We are unable to uphold the order of the High Court. There were no sanctioned posts in existence to which they could be said to have been appointed. The assignment was an ad hoc one which anticipatedly spent itself out. It is difficult to envisage for them, the status of workmen on the analogy of the provisions of Industrial Disputes Act, 1947, importing the incidents of completion of 240 days' work. The legal consequences that flow from work for that duration under the Industrial Disputes Act, 1947 are entirely different from what, by way of implication, is attributed to the present situation by way of analogy. The completion of 240 days' work does not, under that law import the right to regularization. It merely imposes certain obligations on the employer at the time of termination of the service. It is not appropriate to import and apply that analogy, in an extended or enlarged form here.

7. In Haryana State Electronics Development Corporation Ltd. Vs. Mamni, the Apex Court having noticed that the workman was initially appointed for 89 days and thereafter extended from time to time, was terminated on 7.8.1992, observed that said appointment was an irregular, not in terms of the recruitment rules, having regard to the Constitution Bench decision in Secretary, State of Karnataka and Others Vs. Umadevi and Others, , directed compensation of Rs. 25,000/- instead of reinstatement and back wages.

8. In Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd., , the Apex Court brought about a distinction between a temporary employee and permanent employee. In that the term "permanent employee" has a right to the post, while a temporary employee" has no right to the post and further that the permanent employee has a right to continue in service until the age of superannuation but as regards temporary employee there is no age of superannuation because he has no right to the post at all and therefore, no directions can be issued in case of any temporary employee that he should be continued till the age of superannuation, while similarly no direction could be given that the daily wage employee should be paid salary of a regular employee. Further that if an employee is not appointed against a sanctioned post he is not entitled to any scale of pay.

The Apex Court held that Courts cannot direct continuance of service in case of non-regular appointee even if an ad hoc or casual appointment is made in some contingency the same should not be continued for long, since a casual or temporary employee is not employed to the post, in the real sense of the term.

Their lordships further observed thus:

The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment.

It was further observed that unless appointments are made by following the rules, such appointees have no right of absorption in the establishment.

In addition their lordships held thus:

Orders for creation of posts, appointment on these posts, regularization, fixing pay scales, continuation in service, promotions, etc. are all executive or legislative functions, and it is highly improper for Judges to step into this sphere, except in a rare and exceptional case. The courts must exercise judicial restraint in this connection. The tendency in some courts/tribunals to legislate or perform executive functions cannot be appreciated. Judicial activism in some extreme and exceptional situation can be justified, but resorting to it readily and frequently, as has lately been happening, is not only unconstitutional but it is also fraught with grave peril for the judiciary.

At paragraph 16 their lordships observed thus:

The Labour Court and the High Court have passed their orders on the basis of emotions and sympathies, but cases in Court have to be decided on legal principles and not on the basis of emotions and sympathies.

9. In Jaipur Development Authority Vs. Ram Sahai and Another, the Apex Court observed thus:

28. We would, therefore, proceed on the basis that there had been a violation of Sections 25G and 25H of the Act, but, the same by itself, in our opinion, would not mean that the Labour Court should have passed an Award of re-instatement with entire back wages. This Court time and again has held that the jurisdiction u/s 11A must be exercised judiciously. The workman must be employed by a State within the meaning of Article 12 of the Constitution of India, having regard to the doctrine of public employment. It is also required to recruit employees in terms of the provisions of the rules for recruitment framed by it. Respondent had not regularly served Appellant. The job was not of perennial nature. There was nothing to show that he, when his services were terminated any person who was junior to him in the same category, had been retained. His services were dispensed with as early as in 1987. It would not be proper to direct his reinstatement with back wages. We, therefore, are of the opinion that interest of justice would be sub-served if instead and in place of re-instatement of his services, a sum of Rs. 75,000/- is awarded to Respondent by way of compensation as has been done by this Court in a number of its judgments. (See State of Rajasthan and Another -v- Ghyam Chand 2007-I-LLJ-228 (Civil Appeal No. 3214/2006, disposed of on July 28, 2006))

10. In State of M.P. and Others Vs. Lalit Kumar Verma, the Apex Court held thus:

20. The decision to implement the judgment was evidently subject to the decision of this Court. But, the SLP is barred by limitation. The question, inter alia, which arises for consideration before us is as to whether we should condone the delay or allow the respondent to continue to occupy the permanent post.

21. The legal position somehow was uncertain before the decision rendered by the Constitution Bench of this Court in Uma Devi (supra). It has categorically been stated before us that there was no vacant post in the department in which the respondent could be reinstated. The State had also adopted a policy decision regarding regularisation. The said policy decision has also no application in the case of the respondent. Even otherwise, it would be unconstitutional being hit by Article 16 of the Constitution of India.

22. Keeping in view the peculiar facts and circumstances of this case, we are of the opinion that the interest of justice would be sub-served if we direct that any benefit which has already been given to the respondent shall not be recovered. He is also directed to be paid a sum of Rs. 1,50,000/- (One lakh fifty thousand) towards compensation and costs for condoning the massive delay in filing the Special Leave Petition.

Regard being had to the facts obtaining therein, the workman was appointed on daily wages and not in terms of statutory rules, while no offer of appointment was also issued, however, on an application made by him before the Labour Court, an award was made, it was observed that working continuously for a period of more than six months did not secure to the workman a right of permanent clerk but his services may not have been terminated without complying the provisions of Section 25F of the ID Act, regard being had to Umadevi's case (supra), hence the Apex Court directed Rs. 1,50,000/- as compensation in lieu of reinstatement and back wages.

11. In Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another, , the Apex Court following a line of decisions observed that the Court had clearly laid down that an order of retrenchment passed in violation of Section 25F although may be set aside, but an award of reinstatement should not, however, be automatically passed and that it was not proper to award reinstatement with full back wages in case workman has completed 240 days in a year preceding the date of termination, particularly daily wagers. In addition, it was observed that a distinction between a daily wager is he does not hold a post which a permanent employee holds and accordingly, directed payment of compensation of Rs. 50,000/- to the workman who was intermittently engaged from 1.9.1995 to 18.7.1996.

12. In U.P. State Electricity Board Vs. Laxmi Kant Gupta, the Apex Court held that there has been a shift in the legal position which has been modified by the Courts and therefore, there is no hard and fast principle that on the termination of service being found to be illegal, the common rule is reinstatement with back wages. Compensation can be awarded instead, at the discretion of the Labour Court, depending upon the facts and circumstances of the case. In the facts obtaining therein, the workman received more than Rs. 7,00,000/- although he had worked only for two years between 1984 and 1986 as a purely temporary employee and had raised the Industrial Dispute 10 years after the termination of service and therefore, opined that the workman was sufficiently compensated.

13. In *Senior Superintendent Telegraph (Traffic) Bhopal Vs. Santosh Kumar Seal and Others*, , the Apex Court having noticed the fact that workmen were engaged as daily wagers about 25 years ago, for hardly 2 or 3 years, denied the relief of reinstatement and directed compensation at the rate of Rs. 40,000/- for each workman, in lieu of reinstatement.

14. The question as to whether an order of reinstatement automatically follows the case where engagement of a daily wager is brought to an end in violation of Section 25F of ID Act, came up for consideration before the Apex Court in *Incharge Officer and Another Vs. Shankar Shetty*, whence, following the opinion in a catena of decisions of the Apex Court including the decision in *Jagbir's* case, observed had rendered an answer uniform on the said question and regard being had to the facts of that case where the workman was engaged continuously for about 7 years, intermittently up to 6.9.1985 i.e., about 25 years ago, directed payment of compensation of Rs. 1,00,000/- in lieu of reinstatement.

15. In *Rajkumar Mishra Vs. Jalagaon Municipal Corporation*, the Apex Court having noticed that the workmen were employed on daily wages or on temporary basis sometime during the year 1989 and terminated during the year 1991 approached the Labour Commissioner during 2001, directed compensation of Rs. 1 lakh/- each for such of those workmen who approached the Conciliation Officer within two to three years from the date of termination in lieu of reinstatement and back wages.

16. In *Devinder Singh's* case (supra) it was held that the workman was engaged, though, he was already in its employment, as a clerk, for a period of six months, on contract basis, on a consolidated monthly salary of Rs. 1,000/- and at the end of six months the Management passed a resolution dated 30.11.1995 and again employed the workman for a period of six months from 1.11.1995 to 20.4.1996 and thereafter repeated every six months, however his engagement was discontinued w.e.f. 30.9.1996 without notice or pay in lieu thereof or compensation as required by Section 25F of the Act. That engagement of a clerk who was already in employment in the organization was not preceded by an advertisement and consideration of competing claims of other eligible persons, which could not be undertaken because of the ban imposed by the State. It is in these facts that the Apex Court held that the workman was entitled to reinstatement and wages between the date of award and date of actual reinstatement.

17. The decision of the Apex Court relied upon by the learned counsel for the respondent-workman is inapplicable on facts. Admittedly respondent was not employed on a regular basis in terms of the Recruitment Rules and therefore, on facts, the decision in *Devinder Singh's* case has no application. Regard being had to the observations of the Apex Court noticed supra, and applying the same to the facts of this case, ends of justice would be met by directing the petitioner to pay Rs. 1,00,000/- as compensation in lieu of reinstatement and back wages.

In the result, the petition is allowed in part. The award dated 26.12.2006 in IDA 73/2013 of labour Court, Chikmagalur is modified directing the petitioner to pay Rs. 1,00,000/- to the respondent as compensation in lieu of reinstatement and back wages in addition to the amounts already paid to the respondent as and towards wages u/s 17B of the Act. The modification of the award shall effect from the date of the award.